IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 59/2002 AND C.A. NO.303/2002.

Mr. Manik Nakul Dessai,
aged 58 years, son of
Nakul Dessai, No.5,
Shri Krishna Building,
Business Point, Vasco-da-Gama,
Goa. ... Appellant.

VERSUS

1. M/s. Goodfaith Shipping
Company, 47-49,
Bouboulinas Str. 18535,
Piraeus, Greece.

2. Master of the Ship M.V.
Regina, present in
Mormugao Port,
Mormugao, Goa.

3. Seastar Shipping Services,
Shipchandlers & Ship Repairers,
10, Rex Chambers, Ground Floor,
Wallchand Hirachand Marg,
Opp. India Dock Red Gate,
Mumbai 400 038. ... Respondents.

Mr. M.S. Sonak and Mr. D. Pangam, Advocates
for the Appellant.

Mr. S.D. Lotlikar, Senior Advocate with
Mr. A.D. Bhobe, Advocate for the Respondents
No.1 and 2.

CORAM: P. V. KAKADE, J.

DATE: 5TH DECEMBER, 2002.

J U D G M E N T:

This is an appeal preferred by the plaintiff in Special Civil Suit No.4/2002/A against the Judgment and Order passed by the

Civil Judge S.D., Vasco-da-Gama in the said suit dismissing the application for temporary injunction by Order dated 29th August, 2002.

2. Admit. Taken up for hearing immediately by consent.

3. I have heard Mr. Sonak the learned counsel for the appellant and Mr. S.D. Lotlikar, the learned senior counsel for the respondents.

4. The facts giving rise to the dispute in short are thus :-

The appellant filed a suit for a Decree in the sum of Rs.8,77,810/- towards the provisions/stores supplied to M.V. Sunrise I, M.V. Regina and M.V. Spear in the month of May, 1999. The appellant has also prayed for a Decree of Rs.3,95,452/- being interest at the rate of 18% per annum on the said amount from 1.6.1999 till the filing of the Suit. An amount of Rs.10,600/- is also sought to be recovered as expenses incurred towards Faxing, Courier Service and Legal Notice fees. The appellant further sought for restraining order against Master of

the Ship M.V. Regina from removing the said Ship from Mormugao Port till the amount was paid or deposited in the Court. The appellant also sought temporary injunction restraining respondent No.2 from removing the said M.V. Regina from Mormugao Port till the amount is deposited in Court.

The learned Trial Judge granted ex parte injunction restraining the respondent No.2 from removing M.V. Regina from the Port of Mormugao. The respondent filed a written statement and reply to the temporary injunction application. The respondent also sought vacation of the Order dated 5.1.2002 and deposit of an amount of Rs.12,83,862/-. The amount was deposited and in view of that the order of release of the vessel M.V. Regina came to be passed on 9.1.2000. Thereafter the application for temporary injunction filed by the appellant/plaintiff came to be adjudicated on merits and by order dated 29th August, 2002 the application came to be dismissed and hence this appeal is filed.

5. It is the case of the plaintiff that he is a Shipchandler and was conducting business in the name and style as M/s. Manik Nakul Desai.

He is duly licensed to carry out the business for the said ships at Mormugao Port. The defendants are owners of Intercontinental Ships/Vessels carrying goods between different countries. Among the several oceanic ships/vessels which the defendants own are the following ships to which plaintiff has supplied provisions when they called at Mormugao Port on business of loading iron ore and sailing to foreign ports. The plaintiff was appointed by defendants to do shipchandling to their said ships. The plaintiff was contacted by masters of the respective ships upon receipt of particular requisitions from the said masters of the ships. The plaintiff went on providing provisions and stores to them from time to time. The supplies made to the said ships have been duly acknowledged. Some of the provisions/stores of one M/s. Seastar Shipping Services Shipchandler from Mumbai were supplied by them to the plaintiff because they did not have shipchandling licence at Mormugao Harbour. The plaintiff had supplied provisions/stores from his own stores or sources as authorised by the defendants by fax message as the shipchandler to the respective three ships by delivery challans requesting the defendants for payment of US Dollars 18,578.56. Inspite of subsequent

reminders the defendants did not pay the said amount and therefore a legal notice was addressed to the defendants to make arrangements for payment with interest. It was replied to by the defendants informing that the plaintiff was acting on behalf of their principals (M/s Seastar Shipping Services) and that the defendants had no direct relationship with the plaintiff. It was also informed that the defendants had never received any invoice from the plaintiff and that the plaintiff should contact his principal for the payment. On defendants' denial to make good the payment and inspite of repeated letters, the plaintiff filed the suit and also an application for temporary injunction under Order 39 of the C.P. Code to restrain the vessel of the defendants M/s. M.V. Regina which was announced to have arrived at Mormugao. The restrainment was prayed for till the amount claimed was deposited in the Court or paid to the applicant.

6. The defendant no.1 contested the claim stating that they were carrying on business as Managers of various Ships and vessels and during the stay of vessels at Indian ports, the defendant makes supplies to the vessels and provisions to the crew. In the present case the

vessels M.V. Sunrise I, M.V. Regina and M.V. Spear on or about 1995 on behalf of the owners of the vessels have appointed Seastar Shipping Services, Mumbai as their Shipchandler to be managed by them and which would call on Indian ports before the said three vessels came to Mormugao port. The defendants on behalf of the owners inquired with Seastar Shipping Services about the list of items required by the vessels of their rivals and after negotiations with the defendants, the supply to be made was agreed upon. To comply with the said requirement Seastar Shipping Services engaged services of the plaintiff as they used to do so for the past 12 years. The plaintiff informed Seastar Shipping Services that the port authorities at Mormugao had insisted on plaintiff obtaining authority letter from the agents of the vessel permitting the plaintiff to supply provisions/stores to the vessels. In short, it is the case of the defendants that the plaintiff was not independently acting in the said case in making supplies to the said vessels but was acting as agent of the plaintiff and, as such, was not entitled to the amount claimed from the defendant, and it was necessary for him to recover the said amount from Seastar Shipping

Services or the third party involved in the case.

7. In the course of the hearing, Mr. Lotlikar, learned senior counsel for the defendants, submitted that no doubt they deposited the suit amount in the Court, but it was under coercion and therefore the said deposit cannot be said to be made under the provisions of Order 39, Rule 5 of C.P. Code though the plaintiff had sought to attach the vessel M.V. Regina in the Mormugao port. Having considered all material aspects and submissions of both the sides, it is apparent that the application for temporary injunction specifically made two prayers namely:- restrainment of M.V. Regina which had arrived at Mormugao Port and order directing the Surveyor incharge and shipping Master Mercantile Marine Department of Port of Mormugao and other authorities not to allow the Master of the vessel M.V. Regina to remove or sail the ship away from Mormugao Port until further orders of the Court.

8. Accordingly by an ex-parte order the ship was arrested and eventually it was released by the Order of the court only after the suit claimed amount was deposited by the defendants in

the Court. Now therefore in one sense the application was partly redundant because the purpose thereof was served and hence at the time of adjudication, the learned Trial Judge dismissed the application regarding redundant prayer which was already fulfilled. The only question which remained to be answered was whether the amount deposited by the defendants was required to be repaid to the defendants, or whether it should be retained in the Court pending the adjudication of the suit.

9. In my considered view, the moot question around which the case revolves is whether the plaintiff, acted on his own while making supplies to the three ships or acted as agent of defendant No.1 and therefore was not entitled to the suit claimed payments from the defendants. This question, in my view, will have to be adjudicated at the time of final hearing of the suit on merits and therefore without further elaboration I hold that the appeal against the order has to be disposed of with certain directions to the Trial Court in this regard without making payment of the deposited amount to the defendants only on the ground that the

defendants were allegedly coerced into paying and depositing the amount in the Court.

10. Under the circumstances, therefore, it is hereby directed that the learned Trial Judge shall expedite the hearing of the suit as it involves limited issues and adjudicate on merits after giving opportunity to both the sides within six months from the date of receipt of this order. In the meantime the deposited amount shall be invested in any nationalised bank initially for a period of six months and if required for further time pending the suit.

11. With these directions, Appeal from Order stands disposed of with no order as to costs.

P. V. KAKADE, J.

sl.